

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

John Holloway, # 277261,)	Civil Action No.: 5:13-1473-MGL
)	
Plaintiff,)	
)	
v.)	
)	<u>OPINION AND ORDER</u>
South Carolina Department of)	
Corrections; F.S.S. Butler; Wayne)	
McCabe, and Joseph McFadden,)	
)	
Defendants.)	
_____)	

Plaintiff John Holloway (“Plaintiff”), proceeding *pro se*, brought this action against Defendants South Carolina Department of Corrections, F.S.S. Butler, Wayne McCabe and Joseph McFadden (“Defendants”) in the Court of Common Pleas of Florence County, South Carolina. On May 31, 2013, this case was removed to this Court by Defendants. This matter is now before the Court upon the Report and Recommendation (“Report”) of United States Magistrate Judge Kaymani D. West.¹ (ECF No. 21.) In her Report filed on July 26, 2013, Magistrate Judge West recommends this matter be remanded to the Court of Common Pleas, Florence County, South Carolina, pursuant Plaintiff’s motion to remand (ECF No. 17) filed in response to the June 3, 2013 Order issued by Magistrate Judge West (ECF No. 10) instructing Plaintiff to advise the Court as to whether he intended to pursue any claims for violations of his federal constitutional rights. (ECF No. 21.) The Magistrate Judge concludes, having reviewed the contents of Plaintiff’s state court complaint and having considered Plaintiff’s intent to pursue only state tort law claims, that removal by Defendants was not proper.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has

¹This matter was referred to Magistrate Judge West pursuant to 28 U.S.C. § 636(b)(1)(A) and Local Rule 73.02(B)(2)(e), D.S.C.

no presumptive weight. The responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The Court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made.

The parties were advised of their right to file objections to the Report and Recommendation. (ECF No. 21 at 6.) No objections were filed, and the time for doing so expired on August 12, 2013. In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a thorough review of the record including Defendants’ removal documents (ECF No. 1) and Plaintiff’s motion to remand (ECF No. 17), the applicable law, and the Report and Recommendation, the Court agrees with the conclusions of the Magistrate Judge. Accordingly, the Court adopts and incorporates the Report and Recommendation by reference in this Order. For the reasons stated above and in the Report and Recommendation, this matter is REMANDED to the Court of Common Pleas for the County of Florence, State of South Carolina. The Clerk of this Court is directed to forward the file along with a certified copy of this order to the Clerk of Court for Florence County.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

August 30, 2013
Spartanburg, South Carolina